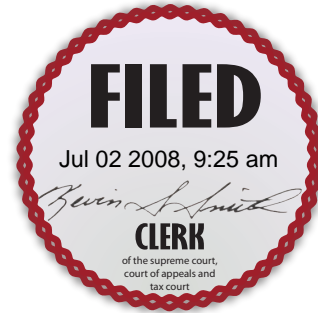


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS PIERCE, III,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0710-CR-479

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0605-FB-0052

July 2, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Thomas Pierce, III (“Pierce”) was convicted in Lake Superior Court of Class B felony attempted robbery. Pierce appeals and argues that the trial court abused its discretion by admitting Pierce’s booking photograph and booking card into evidence.

We affirm.

Facts and Procedural History

On April 27, 2006, Alice Bush (“Bush”) bought her lunch at a restaurant and returned with it to her car. After Bush entered her car, Pierce approached the driver’s side window and demanded money. Bush turned towards him and saw a tall thin man wearing a “reddish-orange shirt.” Tr. p. 27. She also noted that her assailant was a black man with light brown or hazel eyes. Tr. p. 28. Bush did not have any money but offered him her lunch. Pierce struck her in the side of the face with a small pistol then ran away.

Bush yelled to a nearby security guard who located an off-duty police officer working at a nearby store. The officer saw Pierce walking down the street and instructed him to “come here.” Tr. p. 160. Pierce and the officer returned to the parking lot where Bush and the security guard remained. Bush identified Pierce as her attacker. The security guard stated that Pierce was in the parking lot before the robbery and had seen Pierce running away after the attempted robbery.

Pierce was charged with Class B felony attempted robbery, Class C felony attempted robbery, and Class A misdemeanor battery. Pierce attempted to plead guilty to the Class B felony attempted robbery, but the trial court rejected the guilty plea when Pierce maintained his innocence based on mistaken identity.

On June 11, 2007, a two-day jury trial began. During the course of the trial, the State presented Pierce's booking information, including the booking photograph and fingerprint card from the day of the crime. The trial court admitted the information over Pierce's objection. The jury found Pierce guilty as charged. Pierce belatedly appeals.

Discussion and Decision

Pierce argues that the trial court abused its discretion when it admitted Pierce's booking information into evidence. The admission and exclusion of evidence lies within the sound discretion of the trial court; therefore, we review admission of testimony for abuse of that discretion. State v. Lloyd, 800 N.E.2d 196, 198 (Ind. Ct. App. 2003). Such an abuse occurs when the "decision is clearly against the logic and effect of the facts and circumstances." Id.

Generally, evidence of a defendant's criminal history is highly prejudicial and is not admissible. See Boatright v. State, 759 N.E.2d 1038, 1042 (Ind. 2001). The fear is that admission of such evidence will lead jurors to believe that the defendant has been previously arrested. However, "mug shots" are not per se inadmissible and may be admissible if "they are not unduly prejudicial" and "they have substantial probative value." Id.

The booking information at issue is not unduly prejudicial. The photo taken was of Pierce's appearance on the day of his arrest and the fingerprints were also taken on that day. Pierce was obviously arrested on this charge and the booking information reflects only that he was arrested and booked in on the current charge.

In addition, the booking information is of substantial probative value. At Pierce's denial of plea hearing, he argued that the description of the assailant did not match his physical description. The witnesses testified that the assailant wore a reddish-orange shirt. Tr. pp. 27, 84. The booking photo, taken the day of Pierce's arrest, shows him wearing a reddish-orange shirt. Tr. p. 168, Ex. Vol., State's Ex. 10. The State provided information during trial to establish that Pierce's physical description matched that of the assailant on the day of the attack. The booking information was not provided to show Pierce's criminal history and did not do so.

The trial court did not abuse its discretion when it admitted the booking information into evidence.

Affirmed.

MAY, J., and VAIDIK, J., concur.